

Section 3 Protecting human rights

1. Completing legal system work, scrupulously observe the principle of administration according to the law—Instructions for the implementation of human rights protection work by the AAC

Everyone is born free and respect and legal protection for everyone's dignity and equal basic rights are now universal values and also a basic principle of a free democratic country therefore a democratic constitutional state adheres to its constitution to protect human dignity and basic freedom and rights. To protect human dignity the UN has passed the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and all signatory countries are expected to adhere to.

The constitution of the ROC also clearly states that people's basic rights should be protected. The ROC is not a member of the UN however, to keep in line with international standards, the Legislative Yuan has set the Enforcement Act International Covenant on Civil and Political Rights and Enforcement Act for International Covenant on Economic, Social and Cultural Rights for the implementation of human rights protection work.

The founding aims of the AAC were lowering the corruption crime rate, increasing conviction rate and protecting human rights. To ensure that when the AAC's corruption fighting personnel adhere to the constitution, the enforcement acts of the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, and other related human rights protection regulations, avoid breaching human rights and protect the right of the people, actively realizing all kinds of humans right, the Instructions for the implementation of human rights protection work by the AAC were formulated, are strictly followed by all the AAC's corruption fighting personnel.

The aforementioned human rights protection work instructions have the following 11 points: :

- (1). When the AAC exercises its powers, the ROC Constitution, the two enforcement acts, the Criminal Procedure Law and other laws

and regulations should be adhered to avoid breaching human rights and to promote the realization of various human rights.

- (2). When AAC personnel exercise their powers they should follow the principles of investigation confidentiality, proportion and general legal principles.
- (3). When AAC personnel exercise their powers they should strictly adhere to the principle of equality and should not treat people discriminatively differently.
- (4). When AAC personnel collect evidence inappropriate methods should not be used to obtain it; all matters that will benefit or work against the suspect should be paid attention to and fairness strived for.
- (5). When a suspect is arrested or detained, they should be notified of the reason in written form, and within 16 hours of arrest or detention the suspect should be handed to a prosecutor from the Prosecutors Office of the district court that has jurisdiction to meet the regulation in Article 8 of the ROC constitution that says police and prosecutors have only 24 hours to question a suspect.
- (6). AAC personnel should strictly uphold the principle of presumption of innocence.
- (7). When AAC personnel question a suspect a continuous audio recording should be made unless there is an urgent situation; when necessary a continuous video should be made to meet Article 100-1 of the Criminal Procedure Law.
- (8). When AAC personnel question the accused or suspect, a written record of the questioning should be made by someone not doing the questioning unless there is an urgent situation or other good reason to meet Article 43-1 of the Criminal procedure Law.
- (9). Unless permission is received from a prosecutor, AAC personnel must not prevent an accused person or suspect who is detained or arrested from seeing or corresponding with their lawyer to adhere to Article 34 of the Criminal Procedure Law.
- (10). During the statutory bar period AAC personnel must not

question an accused person or suspect; unless there is a statutory reason, nighttime questioning should not be carried out to adhere to articles 93-1 and 100-3 of the Criminal Procedure Law.

- (11). When AAC personnel exercise their powers the accused or suspect should be given other necessary protection.

2. Establishment of an intelligence examination mechanism, accepting external supervision

A. Intelligence review committee handling situation

To analyze and filter intelligence provided by informants to allow investigative resources to be used effectively and corruption crimes to be fought with precision this refining the approach to investigating, increasing the correctness of investigation results to achieve the objective of “not falsely accusing the innocent and not letting the guilty escape”, the AAC Intelligence Examination Team has been established. To strengthen corruption related intelligence examination quality, the Intelligence Examination Team is convened by the chief secretary of the AAC and it has eight members in all, the chief and deputy chief of the Malpractices Investigation Division, the chief and deputy chief of the Civil Service Ethics Division and prosecutors seconded to the AAC, using their practical investigative experience and ethics investigation skill to carry out examination of intelligence. The main items of the intelligence examination mechanism are:

(1) Intelligence examination case scope: When one of the AAC’s regional investigation divisions learns of suspicion of corruption the information should be passed to the AAC’s Intelligence Examination Committee for examination. Cases of conflict of interest, property-declaration cases, project-specific review cases and comprehensive analysis of procurements involving high risk public servants that are reported to the AAC should also be reported to this committee.

(2) Pre-examination investigation and analysis: Before examination by the Intelligence Review Committee, the agent handling the case can carry out initial investigation and analysis and depending on needs for each particular case, request that the responsible ethics unit that provided the intelligence clarify doubts relating to the case, provide more evidence, results of related analysis and opinions about how the case should be handed, and the aforementioned information should be passed

to the Intelligence Examination Committee.

(3) Handling method: To allow excess intelligence or intelligence that is beyond the scope of the AAC's authority to be sifted in a timely way, with respect to anonymous reports of corruption that lack substance, a repeated report of a matter for which a case has been assigned or closed, reports that are clearly unrelated to criminality, obviously false or experience shows to be impossible, fails to point out suspicious that constitute the objective element of a crime, or fail to provide evidence of involvement in a case, the Intelligence Examination Team can file intelligence for reference and periodically pass to the AAC's Clean Government Examination Meeting for assessment.

From the establishment of the AAC on July 7th, 2011 to November 30th, 1095 cases were accepted (1632 reported by the public, 225 provided by ethics units, 18 resulting through confession, nine unearthed by AAC staff initiatively and 21 passed by government agencies or bodies.) After examination by the AAC's Intelligence Examination Team, 265 cases have been passed to the AAC's Malpractices Investigation Division and various investigation offices for in-depth investigation.

B. Clean Politics Advisory Committee examination meeting handling situation

(1) The AAC established the Clean Government Examination Committee on August 30, 2011, comprising of the Minister of Justice-appointed AAC director (convener), AC deputy director (deputy convener) and five others from the MOJ Department of Prosecutorial Affairs Public Construction Commission, Executive Yuan, DGBAS and related organization together with eight other recruited legal, finance, engineering, medical, building management experts and scholar and



impartial personages from all sectors of society. The meeting provides advice and suggestions regarding AAC cases filed for reference, work auditing and investigation results, cases where accused have been found not guilty in court and other clean government items. The aim being, through an external examination mechanism to increase the transparency and fairness of the implementation of the AAC's work and case handling, free of external or political interference and preventing the tabling or disappearing or inappropriate handling of cases.

(2) A pre-meeting explanatory and coordination meeting was held on September 9, 2011, chaired by the AAC director and attended by 12 committee members. During the meeting, apart from reporting the AAC's duties, organizational design, and points for the attention of the Clean Government Examination Meeting and its members, discussion of two topics, "How should members assess investigations that have been filed for reference and "How to implement protection of informants' identity?" was carried out.

(3) On October 13th, 2011 the Clean Government Examination Committee held its first meeting, chaired by ACC deputy director Chang (deputy convener), with 12 members in attendance; Checking and Reviewing Police Operation Implementation Plan members' proposals and meeting procedural items were discussed, 566 cases have been filed for reference launched from the time of AAC establishment to September 8th after information was received by an informant and were found to show no evidence of a crime after being passed to the Intelligence Examination Team, involved same matter being reported twice, where the informant was anonymous and the accusation lacked substance, and where no clear evidence was indicated that have been filed for reference were assessed and the committee agreed that all the cases be thus filed

(4) On December 8th the second meeting of the Clean Government Examination Meeting was held, chaired by the AAC director (convener) and was attended by 11 members. During the meeting discussion of "Analysis of the current clean government situation", National

elementary school and junior high school lunch procurement case-specific report” and the “Suggestion for the rationalization and transparency of cases filed for reference” were put into discussion. 267 cases filed for reference between September 9th, 2011 and October 31st were assessed; two cases deemed to beyond the scope of the AAC’s duties and were passed to another agency, and one case that had the reason for being dropped change, with the dropping of all the remaining 264 cases agreed.



3. Establishment of a news platform, voluntarily releasing information

In the process of planning clean government policy direction and promoting anti-corruption work, public opinion plays several important roles, mainly launcher, promoter and supervisor roles. To allow two-way communication between the AAC and the public the AAC makes frequent use of the Internet, printed media, TV and radio and other media resources, with instantaneous and error free information as the objective, imitatively explaining policies, relating related information, while at the same time building a professional image of the AAC. The results of work are explained below:

A. Establishing of agency website and media contact platform, voluntarily releasing information.

From the day of establishment to December 8th, 2011 the AAC issued 29 press releases and continued to give the public an understanding of its operations through its website and media reports.



B. Printed media reports

- (1) The China Times, Liberty Times and Apple Daily published the AAC reporting hotline and related information on July 20th, 26 and August 3rd, respectively to give the public an understanding of this agency and to win their trust.
- (2) The Clean Government Experience Sharing network column has been established in the Legal Affairs Bulletin (Fawu Tongxun) and, in the No.2553 issue on July 21st, 2011, the article “Opening a new era of clean government” was published introducing the AAC’s organizational framework and its special features, future objectives and work focuses.

C. Media interviews

On the day that the AAC officially began operating, July 20th, 2011, senior officials were interviewed by the BBC Chinese.com and later were interviewed by BCC, Taichung CCM, Family, Kaoshiung Fengmin, Hualian Lianyou and other radio stations. Moreover, on July 28th, 2011 (show aired on August 1) on News 98’s (FM98.1) ”The world in your hand” show AAC director and host Li Yong-ping talked about the AAC’s organizations and goals, key future plans to increase the public’s understanding of the AAC to win more support for anti-corruption work

D. Irregular holding of media seminars

The AAC held its first media seminar on August 10th, 2011, holding the second and dinner on October 6th, 2011, explaining policies to the media.

E. Recording “Executive Yuan Whiteboard”

Recording of the Executive Yuan Whiteboard was completed on August 9th, 2011, publicizing the AAC’s policy objectives and key works.



The media seminar held on August 10th.

4. Promoting clean government research, carrying out policy assessment

The AAC is responsible for planning national clean government policies. To implement policy assessment work, the Agency uses related clean government research to evaluate policy formulation and execution effectiveness and identify future policy directions, also helping make the accompanying legal system complete, meeting the needs of the public.

In 2011 the AAC commissioned three external research projects, the Taiwan area Clean Government Indicator Opinion Poll”, “Entrusted research into the Classified National Security Information Protection Act” and “Research into the improvement of the ROC’s informant reward and protection system”, all will be important reference for policy formulation and related legal system work. The research projects were as follows:

A. 2011 Taiwan area clean government indicator opinion poll

To observe public opinion and grasp the clean government development situation, Transparency International Chinese Taipei was commissioned to carry out the Taiwan area clean government indicator opinion poll. The first opinion poll was taken between June 17th and 26th and the second between September 20th and 23rd, with a random digit

dialing sampling method used and the subjects ROC citizens of 20 and over in Taiwan (not including Kinmen County and Lianjiang county in Fujian Province).

The items in the first poll were “Seriousness of vote-buying, lobbying and ‘red envelope culture’ etc.,” “Is all bribery illegal?” “Integrity level of various types of civil servant and levels of elected representative” “Survey of the source of public perception of civil servant integrity level perception” and “Assessment of government clean government policies.” The items in the second poll were: The seriousness of ROC government corruption over the next three years, “Seriousness of corruption in various agency/department”, “Assessment of the effect of cash giving” and “Effect of entreating or lobbying” etc..

The research found that in terms of the seriousness of the three corrupt practices “red envelope culture”, “lobbying culture” and “vote-buying culture” (0 was not serious at all and 10 was extremely serious) vote-buying was seen as most serious, with an average of 6.41 points. (see Table 2-3-1)

Table 2-3-1 Respondent assessment of the seriousness of corrupt behaviors

| Inappropriate behavior | June 2011 | | July 2010 | | June 2009 | |
|---|-----------|---------------------|-----------|---------------------|-----------|---------------------|
| | average | Standard difference | average | Standard difference | average | Standard difference |
| Taiwan election vote buying situation | 6.41 | 2.85 | *6.89 | 2.80 | *6.66 | 2.85 |
| Ordinary citizens asking someone to entreat on their behalf when visiting a government agency on business situation | 5.70 | 2.80 | 5.81 | 2.87 | 5.73 | 2.85 |
| Ordinary citizens giving red envelope when on visiting government agency on business situation | 4.46 | 3.23 | 4.48 | 3.21 | *4.24 | 3.10 |

Note: testing the average difference of this study used a simple

one-sample t-test with $P < 0.05$ as the basis of deciding if there was a significant difference. * represents that the average is significantly different to the results of the previous two polls (June 2009 and July 2010) ($P \leq 0.050$).

In terms of the people of Taiwan's confidence that the AAC will raise the level of government integrity, the average score was 4.76 (scoring from 0-10). The results in Fig. 2-3-1 show that there is still much room for progress in terms of the effectiveness of clean government policies.

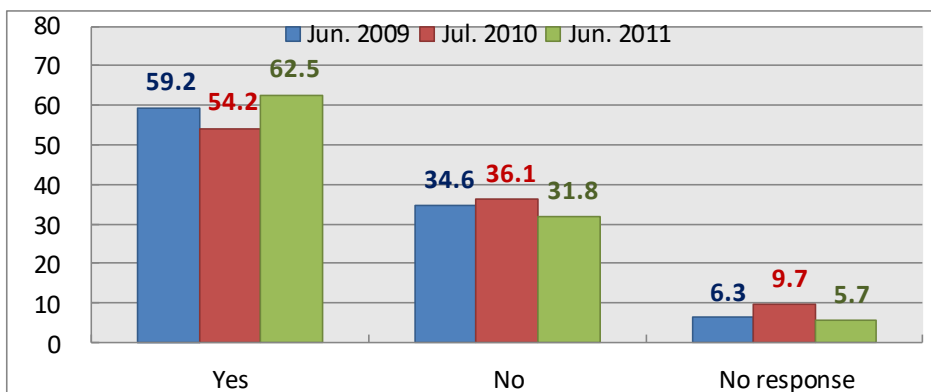


Fig.2-3-1 Respondent confidence that the AAC will raise the level of government honesty

Also, as for the level of public tolerance of civil servant corruption, the study found that the average score was 2.83 (scoring 10 to 10 as show in Fig.2-3-2) showing that to a large degree the public cannot tolerate such corruption, with only 31.8% saying that they would not inform on corruption while 62.5% said they would inform on corrupt government personnel initiatives. (as shown in Fig.2-3-3.)

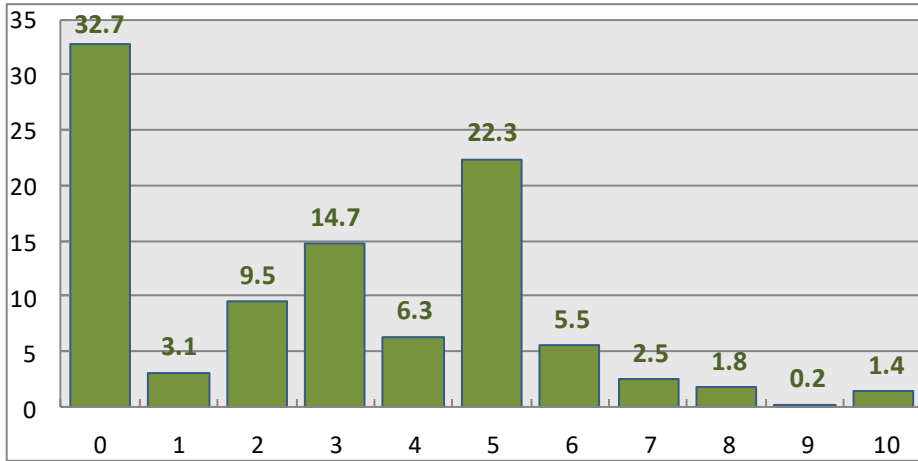


Fig.2-3-2 Level of respondent tolerance of civil servant corruption

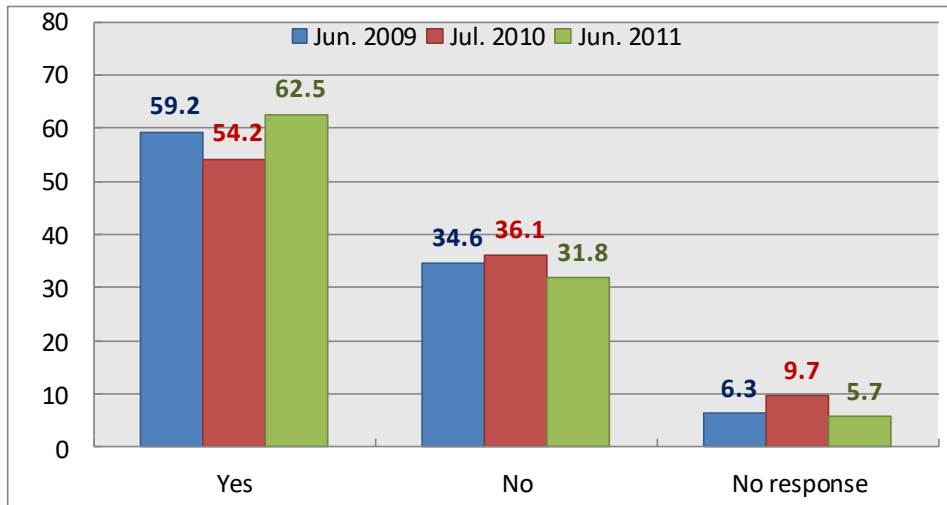


Fig.2-3-3 Level of willingness of respondent to report corruption

B. Results of commissioned Classified National Security Information Protection Act research

Since the Classified National Security Information Protection Act came into effect on October 1st, 2003 it has become clear that some clauses are inadequate, for example, whether pre-exit control adheres to the principle of necessity, whether the legal liability for negligibly leaking classified National Security information is suitable, how should the time of discovery of a crime and the statute of limitations be calculated; and there are also often doubts raised about the applicability of clause. To explore all the problem related to this law the AAC commissioned the Taiwan Administrative Law Association to carry out the “Research into changes in the classified national security information protection policy and key amendments”, carrying of systematic, comprehensive review and assessment of the Classified National Security Information Protection Act and formulate key amendments.

This research will be of help in terms of reviewing the effectiveness of the Classified National Security Information Protection Act and related problems since it came into effect seven years ago, and will also clarify the balance of legal benefit between national security and making public of information or press freedom; at the same time, following the No. 627 interpretation by the Justices of the Constitutional Court, Judicial Yuan, the research also allowed strict assessment of whether the National Security Information legal system needs to be amended to be carried out and concrete suggestions to be put forward.

This study was completed on November 24th, 2011 and the final report put forward the following suggestions for amendments to the Classified National Security Information Protection Act.

| Clause | Suggested amendment |
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| Clauses 2, 4 | In coordination with the passing of the Government Agencies Law, the definition of “government agency” should be revised or Incorporated Administrative Agencies added. |

| | |
|-----------|---|
| Clause 12 | “National classified information related to national security intelligence source or channel should be kept secret permanently” so that the public never knows seems an excessive restriction and it would be better if a time limit was set and a related supervision mechanism added |
| Clause 10 | There is an overlap between Paragraph 2 in this clause and the scope and function of Paragraph 1, Clause 9 of the The Freedom of Government Information Law and to avoid doubt it is suggested the former is repealed. |
| Clause 26 | Taking into account the opinions of various government agencies and operating situation, this rule is still required but should be divided into people who nominally manage files and those who actually come into contact with them, the two kinds of people subject to different control measures, the former’s exit control using reporting system. Imposition of criminal punishment for breaches according to Clause 36 should be ended and instead they should be subject to administrative accountability or criminal punishment imposed under another regulation if classified information is leaked as a result. |
| Clause 25 | Paragraph 2 of this clause states: “The prosecutor or judge may, in accordance with his or her authority or upon motions, deny or restrict the scope of confrontation or examination if classified information is likely to be disclosed during the confrontation or examination process.” However there are no regulations regarding notification duty, examination process or relief and other matters. It is suggested that related clauses are added with reference to the US’s CIPA. |

Other policy suggestions are as follows:

| Rule | Policy suggestion |
|----------|---|
| This act | A rule stipulating that when a court hears a case it can examine whether information verified as classified information matches the |

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| | form and requirements to be classed as classified information and is not bound by the verifying behavior of the authorized agency should be added. |
| Clause 2 of the Enforcement Rules of this Act | This clause should be moved to become part of this Act and restricted to defense and diplomatic matters, and the general regulations in paragraph 7 revoked. |
| Council of Grand Justices No. 627 | The relationship between the president's classified information special powers and this act should be clarified. The requirements and related procedures that give the president the special powers with regards to state classified information to refuse to testify in criminal proceedings (including investigation) and refuse to provide related evidence should be clearly stated in the Criminal Procedure Law. |
| "The Management Regulations for Classified Archives" | It is suggested that the regulation in the Act's clause 22 under which each agency is responsible for inspecting and declassifying should be strengthened, ("Archives management division shall check Classified Archives periodically. When checking, it may request the responsible division to deal with the change of classification levels or the declassification of Classified Archives according to relevant laws or regulations."). The Executive Yuan periodically convene a state classified information report attended by the responsible persons from each agency to review the situation with regards to the state classified information in their care at present. |

C. Results of research into improving the ROC's system for rewarding and protecting people who report corruption.

There is a need to review whether Clause 18 of the current Anti-Corruption Act, The Anti-Corruption Informant Rewards and Protection Regulation, (Announced on December 3rd, 1979, amended on July 20th, 2011) should be amended in light of amendments to the Criminal Law and Criminal Procedure Law and developments in technology, finance and communications and other social changes. To carry out an in-depth exploration of Taiwan's anti-corruption informant reward and protection system, and plan the direction of future research related to the system, the AAC commissioned National Kaohsiung University to carry out "Research into improving Taiwan's anti-corruption informant reward and protection system".

This project also looked at the execution situation of Anti-Corruption Act, the Witness Protection Act and The Anti-Corruption Informant Rewards and Protection Regulation, analyzed the effectiveness of the implementation of Taiwan's anti-corruption informant reward and protection system and other counter measures with respect to shortcomings in the current system and formulated legislative and systemic reform directions. Also, with macro view, issues relating to the system were examined, such as the subject matter of the report of corruption, methods of encouraging people to inform on corruption, the effect of varying informant status on follow-up protection system establishment and issuing of reward, channels for informing and protection methods, also putting forward concrete suggestions for reference when related systems are established in the future.

Suggestions for reform directions of Taiwan's anti-corruption informant system reform arising from this research are as follows:

| Suggested reform | Content Suggestion |
|--|---|
| Principle type suggestions for legislation and systemic reform | (1)Formulate Public Interest Disclosure. Act or similar law |

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| in Taiwan | <p>(2)Add informant protection regulations to Chapter 7 of the Administrative Procedure Act</p> <p>(3) Add denunciation case handling regulations to the Main points for handling of petitions from the public by the Executive Yuan or its subsidiary agencies”</p> <p>(4)Amend the Witness Protection Act (Paragraph 1, Clause 15 and add clauses)</p> <p>(5)Add regulations that protect people civil servants who report corruption in the (public sector) in the Public Functionaries Protection Act.</p> <p>(6) Add regulations to the Labor Standards Law that protect employees who report corruption (private sector)</p> <p>(7) Other suggestions</p> <p>1.Suggestions that people who take part in corruption crimes come forward to report them</p> <p>2.Suggest that the Judicial Yuan strengthens protection of informant identity</p> |
| Suggested amendments to the Anti-Corruption Informant Rewards and Protection Regulation | The research has listed a “Suggested amendments to the Anti-Corruption Informant Rewards and Protection Regulation”. |